



UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE  
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SEP 15 2005

EDWARD FEDEROWICZ  
98 WEST 32ND STREET  
BAYONNE NJ 07002

In re Application of	:	
EDWARD FEDEROWICZ	:	DECISION ON PETITION
Application No. 09/940,211	:	TO WITHDRAW THE
Filed: August 28, 2001	:	HOLDING OF ABANDONMENT
For: SHIFT" (SECURE HOME INTERACTIVE	:	
FINANCIAL TRANSACTOR) INTERNET	:	
CREDIT CARD SECURITY SYSTEM	:	
AND NON-INTERNET ELECTRONIC	:	
BANKING SYSTEM	:	

This is in response to applicant's letter received in the United States Patent and Trademark Office (USPTO) on July 28, 2005. This letter is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181. There is no fee for this petition.

The petition is **DENIED**.

A review of the file record indicates this application became abandoned on May 17, 2005 for failure to properly respond to the Office Action mailed November 17, 2004, which set forth a three-month, extendable period in which to respond.

Applicant requests withdrawal of holding of abandonment as he contends that a response was timely filed December 14, 2004. In the instant petition as well as in a letter received April 04, 2005, Applicant states that a five page response letter was mailed to the USPTO on December 14, 2004, Attention: Examiner Christina Sherr. Applicant provides a copy of said response as Exhibit "A". Applicant states that approximately three months later he called Examiner Sherr, at which time she told him that she had received the response but the Patent Office had not received the documents and therefore they were not considered officially filed. Applicant states he requested Examiner Sherr to have the Patent Office treat the response she said she had received as an official response and notes the December 14, 2004 response was mailed to the same address as his August 30, 2004 response (attached as Exhibit "B").

The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. There is no record of a December 14, 2004 response in the file and Applicant has failed to provide any acceptable evidence of this response. Acceptable showings include: a date stamped post card receipt, a proper certificate of mail or transmission under 37 CFR 1.8 (MPEP 512), a proper express mail under 37 CFR 1.10 (MPEP 513), and a proper facsimile

transmission of a CPA under 37 CFR 1.6 (MPEP 502.01). While the April 04, 2005 letter included a copy of the alleged December 14, 2004 response, it too failed to include acceptable evidence of a December 14, 2004 mail date. Further, no extensions of time were requested at this time and there is no authorization found in the file to charge for extensions of time such that the April 04, 2005 response could be deemed timely filed.

A copy of Guidelines on Submissions for Pro Se Applicants is attached to assist Applicant with any future submissions.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

#### I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

#### II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

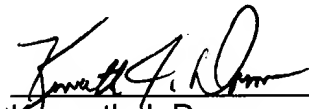
By Mail: Deputy Commissioner of Patent Examination Policy  
Box 1450  
Alexandria, VA 22313-1450

By Fax: (571) 273-8300  
Attn: Office of Petitions

By Hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."



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Kenneth J. Dorner  
Special Programs Examiner  
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SNM/rjc 07/22/05

ATTACHMENT: Pro Se Correspondence Guidelines.

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

### CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

### CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)\_\_\_\_-\_\_\_\_ on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted. For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

**NOTICE TO APPLICANT:** In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.